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10/519,832	01/10/2005	Kazuya Maeda	040625	9645

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EXAMINER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/519,832
Filing Date: January 10, 2005
Appellant(s): MAEDA ET AL.

Darren Crew
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 29, 2009 appealing from the Office action mailed March 24, 2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,494,055	Meserole et al	12-2002
6,234,351	Wilcox	5-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 6, 8, and 9 stand rejected under 35 U.S.C.103(a) as being unpatentable over U.S. Patent No. 6,494,055 to Meserole et al in view of U.S. Patent No. 6,234,351 to Wilcox. Meserole et al discloses the claimed invention of a frozen dessert apparatus which includes a cold storage bag 44 for containing the liquid mix and an air compression device 254a, 29, 42 which supplies compressed air to force the mix out of the bag and into the freezing chamber 17. Meserole et al further discloses a combined passage member 35 which is attached to the cooling cylinder 17 and is connected to the mixture supply passage 46 and the air supply passage 29. However, Meserole et al does not disclose that the bag includes an inner layer and an out4er layer with the compression device supplying the compressed air between the layers, or that the combined passage is disposed in the cold storage 40. Wilcox teaches in Figs. 26-31 a dispensing device which uses compressed air through conduit 15 to supply compressed air to a bag which includes an outer layer 206 and an inner layer 201 to force the liquid in the bag to be dispensed. Thus, it would be obvious to modify Meserole et al so that the bag 44 includes two layers and the compressed air is supplied between the layers, in view of Wilcox, to yield the predictable result that the liquid is positively sealed in the bag by virtue of the two layers. The location of the combined passage member 35 of Meserole et al is considered to be a matter of obvious choice to one of ordinary skill in the art. No criticality or unexpected results are seen or have been disclosed for the

location of the combined passage member being located in the cold storage 40, as opposed to the disclosed location outside the cold storage.

(10) Response to Argument

Appellant argues that it would not be obvious to change the location of the air injection point 35 of Meserole et al to a new location inside the refrigerated mix cabinet 40 alleging in the first full paragraph of page 15 of his brief that this would "modify" the operation of Meserole et al. He further states that the mix and the air would be at colder temperatures when they are combined, and that the mix and air would combine in a different manner. However, he fails to explain these statements. There is no explanation, for example, of how Meserole et al would operate any differently if the air and mix were combined inside the cold storage room, as opposed to how Meserole et al operates as disclosed, with the air and mix combining outside the cold storage room. There is no explanation as to how or why the operation of the device of Meserole et al would be modified in any way, shape, or form no matter where the air and mix are combined. Those of ordinary skill in the art would be motivated to make any necessary adjustments to the air and mix to ensure that the final product has acceptable characteristics when moving the location of the air injection point 35.

Appellant has not provided any sort of criticality or unexpected results as to why the claimed location of the combined passage member should be located inside the refrigerated mix cabinet, instead of outside. There is no statement in Appellant's specification as to why this location is critical. Furthermore, it is not readily apparent to

one of ordinary skill in the art that any unexpected results would be obtained by locating the combined passage member inside the refrigerated cabinet.

It is noted that, in the instant invention, the air supply line 51 that is located inside the refrigerated storage room 2A in Fig. 1 and that leads to the mixing joint 57 is a relatively short one. This means any cooling effect that would be obtained from the air flowing through the line 51 would be negligible. It appears that there would not be any significant cooling of the air that would change any performance of the mixing of the air and mix before entering the freezing cylinder.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/William E. Tapolcai/

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